United Nations CAT/C/SR.1214

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
24 September 2014
English
Original: French

Committee against Torture
Fifty-first session

Summary record of the first part (public)* of the 1214th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 30 April 2014 at 10 a.m.

Chairperson: Ms. Belmir (Vice-Chairperson)

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* No summary record was prepared for the second part (closed) of the meeting.

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Initial report of Thailand (CAT/C/THA/1; HRI/CORE/THA/2012)

1. *At the invitation of the Chairperson, the delegation of Thailand took places at the Committee table.*

2. **Mr. Savestanan** (Thailand) said that, although Thailand had made interpretative declarations on articles 1, 4 and 5 of the Convention, its legislation did not condone the use of torture under any circumstances. While the current Penal Code contained no definition of torture and did not expressly cover that offence, it did have provisions comparable to article 1 of the Convention. The Criminal Procedure Code stipulated that, when taking a statement from an alleged offender, an investigator was prohibited from making any arrangements leading to a guarantee, promise, threat, deception, torture, using force or any other unlawful act in order to induce the suspect to make a statement concerning the charge against him or her.

3. The Thai Government was currently amending its domestic legislation to bring it into line with the Convention. For example, it had completed the drafting of the Act on the amendment of the Penal Code, which criminalized torture and stipulated that any administrative, police or investigating officer who committed torture was liable to a fine and a maximum penalty of life imprisonment, and the drafting of an Act amending the Criminal Procedure Code which provided that any person who had been a victim of torture or subjected to cruel, inhuman or degrading punishment could refer the matter to the courts and could obtain protection and redress. In addition, Thailand was contemplating accession to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and with that in mind it was examining the possibility of designating the National Human Rights Commission as the national preventive mechanism. The possibility of abolishing the death sentence had been raised in the third National Human Rights Plan which would be submitted to the Cabinet in the near future.

4. The Government was striving to find a peaceful solution to the situation in the southern border provinces. The special laws it had passed in order to ensure the peace and security of the region's population were applied in strict compliance with the principles of necessity and proportionality. The Government was fully aware of the concerns expressed by international organizations and NGOs about human rights challenges in the area. It was, however, sparing no effort to improve the population's living conditions, preserve the local cultural identity and protect the rights of all groups without discrimination.

5. The Government had taken numerous steps to improve familiarity with the provisions of the Convention and to promote human rights education. Since 2013, the Central Institute of Forensic Science had cooperated with the Ministry of Justice to offer a series of training modules for doctors who wished to specialize in the examination of alleged victims of torture. The Ministry of Justice had also introduced a national trainers' training course in the international human rights instruments to which Thailand was a party, including the Convention, for the police, the armed forces and legal officers. Information about human rights and the obligations related thereto was circulated to the population and to the police and the armed forces stationed in the southern border provinces. Thailand had issued a standing invitation to all special procedures mandate holders, including the Special Rapporteur on torture, who would visit the country in August 2014.

6. **Ms. Gaer** (Country Rapporteur) said that the Committee had been very pleased to receive the State party's initial report, but was curious to learn why it had been submitted five years late. She noted that, in the common core document, the State party indicated that,

in keeping with a pledge made in the context of the universal periodic review, it had withdrawn its declarations in respect of certain human rights instruments. Did it intend to take the same step with regard to its declarations concerning the Convention? Had a timeline been set for the designation of a national mechanism to prevent torture?

7. It was troubling that the definition of torture contained in the draft Act on amendment of the Penal Code was inconsistent with the definition in article 1 of the Convention, since in the draft Act the term "torture" meant rape, physical assault causing grievous bodily harm or prolonged mental harm and therefore excluded some forms of psychological torture. Hence, in order to qualify as torture, the acts covered by the draft Act must cause more acute pain and suffering than those covered by the Convention. In addition, the draft Act made no mention of the numerous grounds on which torture might be inflicted, such as discrimination, and its definition of "public official" would not encompass all the potential perpetrators of torture. Another worrying feature of the draft Act was that it did not expressly prohibit an affirmative defence, or reliance on an order from a superior as an excuse for torture and it did not prohibit the statute of limitations for the crime of torture. In view of the fact that it was a final draft amendment, she asked the delegation to outline the steps which the Government could take to allay those concerns and ensure that the forthcoming statutory ban on torture would cover all the elements of article 1 of the Convention.

8. She requested more information about the safeguards provided by the Code of Criminal Procedure in order to protect crime suspects deprived of their liberty. Were they entitled to consult an independent physician? Were all places of detention bound to keep reliable registers and to allow detainees, their lawyers and their relatives to consult them? It would also be useful to have information on the manner in which the Government ensured compliance with those safeguards in practice and how it monitored the conduct of members of the security forces in that respect. The delegation might explain how the Government monitored police officers' respect for the right of any person deprived of their liberty to be attended by a lawyer during questioning, and to say whether police officers found to have breached the Criminal Procedure Code by denying a detained person the right to contact a lawyer had been disciplined. It would also be interesting to know how many persons in detention had filed habeas corpus petitions with the courts in recent years and how many persons had been freed when that remedy had been granted.

9. The emergency laws in force in the southern provinces raised a number of issues, especially with regard to minimum safeguards for persons charged with a crime. According to information received by the Committee, 5,283 emergency arrest warrants had been issued and 4,080 suspects arrested under the 2005 Decree on Public Administration in Emergency Situations alone. It would be interesting to know how many people had been detained under that decree since Thailand had acceded to the Convention against Torture. Did the Government intend to take steps in the south of the country to strengthen the protection of all detainees against torture and to see to it that any person deprived of liberty was brought before a judge within 48 hours? Did it intend to amend the guidelines on implementing the above-mentioned decree to make it clear that every detainee had the right promptly to contact a lawyer and to be examined by an independent doctor if he or she so requested? The delegation might also describe the measures taken to ensure the authorities' compliance with the safeguards to which detainees were entitled. What methods were used to detect and punish denials of those safeguards?

10. The initial report mentioned only two cases where public officials had been convicted of acts of torture (Supreme Court Judgements Nos. 1399/2508 and 706/2516), although the Committee had received hundreds of reports of torture, above all from the National Human Rights Commission. She would like the delegation to provide details of those two cases and the rank of the officials who had been prosecuted, the date and place of

the offences and the sentence passed. Detailed information would also be welcome on any disciplinary measures concerning State officials accused of torture within the meaning of the Convention, the number of complaints of torture received by the relevant State bodies and the number of prosecutions since Thailand had acceded to the Convention.

11. She noted with concern that, although in some cases the competent State bodies had found that officials had committed torture, the perpetrators had not been prosecuted, let alone punished. That had been true in the cases of Imam Yapa Kaseng, who had been beaten to death by army officials in 2008, and Ashari Samae-ae, who in July 2007 had died from brain injuries resulting from assault by the police and army officers who had arrested him. Reports regarding the impunity of the perpetrators of enforced disappearances were also very disquieting, especially in the cases of Jahwa Jalo in 2003, Somchai Neelapaijit in 2004, Kamon Laosopapan in 2008 and Por Cha Lee Rakchongcharoen, also known as "Billy", in April 2014. In the case of Somchai Neelapaijit, senior officials had publicly declared the victim to have been tortured and killed by the authorities, but the perpetrators had not been prosecuted. In another case, concerning the enforced disappearance of Mayateng Maranor in 2007, his family had received compensation pursuant to a decision by the Committee on Compensation and Restitution for Persons Affected by the Southern Unrest, but no State official had been prosecuted. Against that background and given that the Thai Government was contemplating ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, it would be interesting to know whether there were any plans to criminalize enforced disappearance. She asked the delegation whether there were any plans to amend the 1914 Martial Law Act, or article 17 of the Decree on Public Administration in Emergency Situations, which encouraged impunity by expressly providing for immunity from civil, criminal or disciplinary liability in certain circumstances when State officials were exercising powers and duties under the Decree. What steps had been taken to make it plain to all State officials that the Thai Government was determined to eradicate torture and punish the perpetrators? She also wished to know whether Thailand considered transferring from the military to the civilian courts responsibility for the prosecution of members of the armed forces who had committed torture.

12. The Committee had been informed that the existing complaint mechanisms, in particular the National Human Rights Commission, were unable to initiate an immediate, impartial and effective investigation of allegations of torture, owing to a general lack of independence. Most torture complaints were investigated by the services supervising the persons concerned. Two bodies outside the police, the prison authorities and the security services, namely the Department of Special Investigation and the National Anti-Corruption Commission, had a mandate to investigate such acts. It would be useful to have some detailed information about their precise duties, the number of cases referred to them and their outcome and to know whether the Government was contemplating any measures to enhance their capacity and independence. Although victims could also turn directly to a court, it seemed that few did so, especially in the southern provinces. Why was that so? She asked the delegation to outline the pertinent provisions of the draft Act amending section 90/1 of the Criminal Procedure Code. What was being done to improve and strengthen measures to protect complainants and witnesses in torture cases and to encourage victims to file complaints?

13. With regard to conditions in prisons, Amnesty International and the International Federation for Human Rights (FIDH) reported numerous acts of violence in various prisons, including beatings and rapes committed by prison warders and detainees enjoying certain privileges ("trusty beatings"). It would be helpful to know if those incidents had been investigated and whether any disciplinary measures or punishment had been ordered. The use of restraints in prison was another subject of concern. She asked the delegation whether the Government had impressed on prison warders that shackles must be used only

when absolutely necessary and whether it encouraged the use of other means of control, such as electronic bracelets. Details of the membership, terms of reference and powers of the committee responsible for supervising the use of restraints in detention would also be welcome. It was regrettable that Thailand had not supplied adequate data on the severe overcrowding and insanitary conditions in prisons and migrant detention centres. She asked whether any inspections had been conducted in Ranong detention centre, where two people had died in 2009 after being held with a group of 78 other persons and in another detention centre, where 5 Rohingyas had died shortly after being placed there in 2013. Had any officials been disciplined? She also wished to know whether detainees had access to a lawyer and whether alternative sentences were used to relieve overcrowding in prisons.

14. According to some reports, the Thai authorities had send Rohingya asylum seekers back to Myanmar and had prevented boats carrying persons belonging to that minority from approaching the coast of Thailand. She wished to know if those allegations had been investigated and on what evidence the authorities decided whether an asylum seeker ran the risk of torture if he or she were to be returned. In 2005, 2008 and 2009, the Thai authorities had sent back several groups of Hmong to the Lao People's Democratic Republic, including 158 persons whom the Office of the United Nations High Commissioner for Refugees (UNHCR) had identified as being at risk of arrest and torture in the event of being returned to their country. According to reliable sources, one of the persons who had been forcibly repatriated in 2009 had been arrested in 2011 and had died in custody after being tortured. Why had the State party ignored the assessment of UNHCR and the concerns expressed by Amnesty International in respect of those returns?

15. In addition, she requested the delegation to supply statistics on the prison population and on the number of women and minors in detention, of persons in pretrial detention, of persons placed in drug rehabilitation centres, of suspects detained under the Decree on Public Administration in Emergency Situations, of deaths in detention and of inquiries into those incidents, and to say what had been the outcome of those investigations. She asked whether action had been brought against the army officers suspected of having tortured Imam Yapa Kaseng to death while he was in their custody and whether an impartial inquiry had been opened into the October 2004 incident when 78 persons had died of suffocation after being piled into lorries for their transfer to a military barracks. Since the national courts had taken the view that the officials in question had not been guilty of misconduct, it would be interesting to know whether the relatives of those 78 persons could attempt to institute a fresh inquiry and seek redress. She also invited the delegation to comment on one of the conclusions of the National Human Rights Commission's report that pretrial and convicted detainees were not separated in places of detention, and whether the Thai authorities had authorized an independent body to monitor detention conditions in premises under the authority of the Ministry of Justice and in the police's operations centre in the southern border provinces, as recommended by the National Human Rights Commission in its report.

16. She also wished to know whether the State party intended to adopt measures to treat domestic violence not as a dispute that could be settled out of court, but as a serious offence for which the perpetrator was liable to prosecution and criminal penalties. Had the Government followed the recommendations made to it by the Special Rapporteur on trafficking in persons, especially women and children after her visit in 2011 (A/HRC/20/18/Add.2)? Lastly, she invited the delegation to supply statistics showing the number of cases in which the courts had declared statements obtained through torture to be inadmissible and to comment on allegations that doctors were reluctant to certify the existence of after-effects of torture, for fear of reprisals.

7. **Mr. Gaye** noted that it transpired from paragraph 62 of the report that the State party's criminal procedure had some gaps when it came to fundamental safeguards, in particular every suspect's right to consult a doctor irrespective of his or her state of health and to speak to a lawyer of his or her choice immediately on being deprived of liberty. He would be interested in the delegation's comments.

18. **Mr. Modvig** asked how many doctors would participate in the training programmes mentioned by the delegation in its opening statement, what subjects they would cover and how long they would last. He wished to know whether doctors who had received that training could examine detainees as soon as they entered a place of detention, join in visits to places of detention by independent bodies and draw up documents certifying the existence of after-effects of torture on the basis of the Istanbul Protocol. He also wished to know whether doctors were trained in the physical and psychological rehabilitation of victims of torture. Could the Thai Government authorize civil society organizations to visit places of detention pending the establishment of the national preventive mechanism?

19. **Mr. Domah** said that the information contained in the report was too general in nature for the Committee to form a precise picture of how the Convention was implemented in practice in the State party. It would be useful to have statistics in support of the claim in paragraph 93 of the report that the number of complaints of torture had decreased after Thailand's accession to the Convention.

20. **Mr. Zhang Kening**, noting that paragraph 41 of the report made it clear that, under Thailand's criminal procedure, either public prosecutors or injured persons might bring an action to court, or proceed as joint plaintiffs, requested the delegation to supply examples of cases where that opportunity had been seized and asked what value it had.

21. **Mr. Tugushi** asked whether the State party intended to repeal the special laws and provisions authorizing the solitary confinement of detainees for lengthy periods and whether persons of limited means could obtain legal aid. Had steps been taken to prosecute members of prison staff who were suspected of ill-treating detainees? Did the Thai authorities intend to put an end to the unlimited administrative detention of migrants in an irregular situation? As conditions in the detention centres in themselves constituted inhuman and degrading treatment, it would be interesting to know whether the State party could envisage no longer placing families with children and unaccompanied minors in those facilities. Since guards and refugees alike engaged in violence in refugee camps, he asked the delegation whether officials in charge of the administration and supervision of those camps had been held accountable for those incidents.

22. **Mr. Grossman** asked whether the State party intended to declare a moratorium on the death penalty and whether it acknowledged that enforced disappearances had occurred in the country. If that was so, he wished to know whether any inquiries had been opened, whether anyone had been prosecuted and sentenced for that type of act and whether the relatives of those who had disappeared had obtained full redress. In that connection, it would be interesting to know whether Thailand intended to incorporate into its domestic law the Committee's general comment No. 3 concerning the implementation of article 14 of the Convention (CAT/C/GC/3). He requested the delegation to describe the system for examining asylum applications and to say whether it really did make it possible to determine the risk of torture in the event of return and therefore to forestall any violation of article 3 of the Convention. It would be useful to know whether the State party intended to adopt legislation to ensure that cases concerning civilians could no longer be heard by military courts, but would fall solely within the jurisdiction of ordinary courts.

23. **The Chairperson** asked whether the special laws in force in the south of the country were a logical consequence of the state of emergency and whether the State party strove to secure compliance with the principle that all citizens in that region were equal before the law. According to some reports, Malaysian women resident in Thailand were victims of discrimination. The delegation was invited to furnish explanations in that connection.

The first (public) part of the meeting rose at noon.